

Court No. - 1

Case :- CRIMINAL APPEAL DEFECTIVE No. - 85 of 2024

Appellant :- Lakhan @ Kunjan

Respondent :- State Of U.P. Thru. Prin. Secy. Home Lko.

Counsel for Appellant :- Nasreen Bano, Shyam Kinkar Pandey

Counsel for Respondent :- G.A.

Hon'ble Attau Rahman Masoodi, J.

Hon'ble Ajai Kumar Srivastava – I, J.

- (1) The question that cropped up before us on the previous date of hearing was as to the jurisdiction of a designated Court whether it can try only the offences which are investigated by the National Investigation Agency or all such offences which are scheduled under National Investigation Agency (NIA) Act, 2008 [here-in-after referred to as '**the Act**'].
- (2) Heard learned counsel for the parties at length.
- (3) We were taken through the aims and objects of the Act which clearly reflect that the investigation by a premier agency like, National Investigation Agency is to take up all those cases which involve threat to the national sovereignty and its security besides other grave offences of such a character. Section 6 of the Act empowers the Central Government only to determine whether it is a fit case to be probed by the Agency. Section 6 of the Act is reproduced as under:-

“6. Investigation of Scheduled Offences.— (1) On receipt of information and recording thereof under section 154 of the Code relating to any Scheduled Offence the officer-in-charge of the police station shall forward the report to the State Government forthwith.

(2) On receipt of the report under sub-section (1), the State Government shall forward the report to the Central Government as expeditiously as possible.

(3) On receipt of report from the State Government, the Central Government shall determine on the basis of information made available by the State Government or received from other sources, within fifteen days from the date of receipt of the report, whether the offence is a Scheduled Offence or not and also whether, having regard to the gravity of the offence and other relevant factors, it is a fit case to be investigated by the Agency.

(4) Where the Central Government is of the opinion that the offence is a Scheduled Offence and it is a fit case to be investigated by the Agency, it shall direct the Agency to investigate the said offence.

(5) Notwithstanding anything contained in this section, if the Central Government is of the opinion that a Scheduled Offence has been committed which is required to be investigated under this Act, it may, suo motu, direct the Agency to investigate the said offence.

(6) Where any direction has been given under sub-section (4) or sub-section (5), the State Government and any police officer of the State Government investigating the offence shall not proceed with the investigation and shall forthwith transmit the relevant documents and records to the Agency.

(7) For the removal of doubts, it is hereby declared that till the Agency takes up the investigation of the case, it shall be the duty of the officer-in-charge of the police station to continue the investigation.”

- (4) A plain reading of the aforesaid provisions reveals that the power of State Government to investigate and prosecute the case is not ousted unless the Central Government on the basis of report forwarded by the State or *suo moto* decides a case fit to be investigated by NIA and the case is transferred to NIA. To achieve the objects of the Act, the Central Government in exercise of powers conferred under Section 11 of the Act also undertakes a consultative process for constitution of the designated Court which being relevant is extracted hereunder:-

“11. Power of Central Government to designate Court of Session as Special Courts.— (1) The Central Government shall, in consultation with the Chief Justice of the High Court, by notification in the Official Gazette, for the trial of Scheduled Offences, designate one or more Courts of Session as Special Court **for such area or areas, or for such case or class or group of cases,** as may be specified in the notification.

(2) Where any question arises as to the jurisdiction of any Special Court, **it shall be referred to the Central Government whose decision in the matter shall be final.**

(3) * * * *

(4) * * * *

(5) * * * *

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(7) * * * *

(8) For the removal of doubts, it is hereby provided that the attainment, by the Sessions Judge of the Court of Session referred to sub-section (1), of the **age of superannuation under the rules applicable to him in the service to which he belongs shall not affect his continuance as Judge of the Special Court and the appointing authority in consultation with the Central Government may by order direct that he shall continue as Judge until a specified date or until completion of the trial of the case or cases before him, whichever is earlier.**

(9) When more than one Special Court is designated for an area or areas, the senior-most Judge shall distribute the business among them.”

- (5) The jurisdiction of the designated Court is defined under Section 13 of the Act which being relevant is extracted hereunder:-

“13. Jurisdiction of Special Courts.—(1) Notwithstanding anything contained in the Code, every Scheduled Offence investigated by the

Agency shall be tried only by the Special Court within whose local jurisdiction it was committed.

(2) *If, having regard to the exigencies of the situation prevailing in a State if,—*

(a) it is not possible to have a fair, impartial or speedy trial; or

(b) it is not feasible to have the trial without occasioning the breach of peace or grave risk to the safety of the accused, the witnesses, the Public Prosecutor or a judge of the Special Court or any of them; or

(c) it is not otherwise in the interests of justice,

the Supreme Court may transfer any case pending before a Special Court to any other Special Court within that State or in any other State and the High Court may transfer any case pending before a Special Court situated in that State to any other Special Court within the State.

(3) The Supreme Court or the High Court, as the case may be, may act under this section either on the application of the Central Government or a party interested and any such application shall be made by motion, which shall, except when the applicant is the Attorney-General for India, be supported by an affidavit or affirmation.”

- (6) On a perusal of the aforesaid Section, it is gathered that the designated Court alone is empowered to try all such scheduled offences which are investigated by the National Investigation Agency, however, the jurisdiction of the designated Court in respect of other scheduled offences of which the investigation is conducted by NIA in association with the State or by the State Government is not ousted. The jurisdiction so conferred is subject to the supervision of the Apex Court and the High Courts.
- (7) The Central Government, in the circumstances of the case, may also transfer investigation of a notified scheduled offence back

to the State Government in view of Section 7 of the Act. Relevant Section 7 of the Act reads as under:-

“7. Power to transfer investigation to State Government. - While investigating any offence under this Act, the Agency, having regard to the gravity of the offence and other relevant factors, may –

(a) if it is expedient to do so, request the State Government to associate itself with the investigation; or

(b) with the previous approval of the Central Government, transfer the case to the State Government for investigation and trial of the offence.”

- (8) Thus, the mechanism of investigation under the Act is threefold – (a) offences investigated by the NIA on being notified by the Central Government, (b) the offences notified by the Central Government to be investigated by the NIA in association with the State or transferred back to the State Government for investigation and (c) the scheduled offences under the Act investigated by the State government.
- (9) Insofar as the offences under category (a) are concerned, there is no doubt that the designated Court by virtue of Section 13 of the Act has exclusive jurisdiction to try the same. The difficulty is posed by other two category of cases mentioned above.
- (10) Learned counsel for the appellant as well as learned Additional Government Advocate would argue that all such offences of which investigation is not held by the Special Investigation Agency, i.e., NIA would be triable under general mechanism of criminal administration of justice. The further submission made by learned counsel is that the designated Court is a Special Court and the law does not permit to burden the designated

Court with each and every offence falling within the definition of schedule appended to the Act.

- (11) This according to the submissions putforth would undermine the gravity of the classification as has been carved out by virtue of Section 6 (4) of the Act of which the exclusive jurisdiction lies with the Central Government. The State Government according to the submissions putforth has a mechanism of criminal administration of justice under general law which would cater to the need of justice for other two category of offences, like all other offences under Indian Penal Code or Special Acts to which Cr.P.C. applies.
- (12) The difficulty to accept such a submission is surfaced when we look at the mandate of Section 22 of the Act which empowers the State Government equally to notify a designated Court for the purposes of carrying out the objects of the Act. Section 22 of the Act being relevant is extracted hereunder:-

“22. Power of State Government to designate Court of Session as Special Courts.—(1) The State Government may designate one or more Courts of Session as Special Courts for the trial of offences under any or all the enactments specified in the Schedule.

(2) The provisions of this Chapter shall apply to the Special Courts designated by the State Government under sub-section (1) and shall have effect subject to the following modifications, namely—

(i) references to “Central Government” in Sections 11 and 15 shall be construed as references to State Government;

(ii) reference to “Agency” in sub-section (1) of Section 13 shall be construed as a reference to the “investigation agency of the State Government”;

(iii) reference to “Attorney-General for India” in sub-section (3) of section 13 shall be construed as reference to “Advocate-General of the State”.

*(3) The jurisdiction conferred by this Act on a Special Court shall, until a Special Court is designated by the State Government under sub-section (1) in the case of any offence punishable under this Act, notwithstanding anything contained in the Code, be exercised by the **Court of Session of the division in which such offence has been committed and it shall have all the powers and follow the procedure provided under this Chapter.***

(4) On and from the date when the Special Court is designated by the State Government the trial of any offence investigated by the State Government under the provisions of this Act, which would have been required to be held before the Special Court, shall stand transferred to that Court on the date on which it is designated.”

- (13) Section 22 of the Act provides a complete answer to the arguments put forth by learned Additional Government Advocate when the position of trial of all such offences other than notified under Section 6 (4) is viewed and analyzed within the scope of Section 22 (3) & (4) of the Act.
- (14) In view of above, it is clear that (i) the NIA investigates the offences on being notified by the Central Government or (ii) in association with the State or (iii) shall transfer back to the State Government for investigation or (iv) the State Government investigates the scheduled offences under the Act. Wherever the NIA investigates and the Central Government notifies the investigation to NIA, provisions of Section 13 will apply always. In so far as the scheduled offences are concerned, provisions of Section 22 (3) & (4) will apply as the case may be.
- (15) Pursuant to the provisions contained in the Act, the Central Government vide Notification dated 26th April, 2011 has

notified the 3rd Senior-most Court of Additional District and Sessions Judge, Lucknow as Special Court which reads as under:-

*“NOTIFICATION
New Delhi, the 26th April, 2011*

S.O. 788 (E) – In exercise of the powers conferred by sub-section (1) of Section 11 of the National Investigation Agency Act, 2008 (34 of 2008), the Central Government hereby notifies the 3rd Seniormost Court of Additional District and Sessions Judge, Lucknow as the Special Court for purpose of the said sub-section (1) of Section 11 of the said Act for the trial of Scheduled Offences.

2. The jurisdiction of the Special Court mentioned above shall extend throughout the State of Uttar Pradesh.

*[F. No. 17011/50/2009-IS-VI]
DHARMENDRA SHARMA, Jt. Secy.”*

(16) Thereafter, the State Government vide Notification dated 20th April, 2021 has notified the designated Court which reads as under:-

*“NOTIFICATION
No. 1002/VI-P-9-21-31(75)/2017
Lucknow: Dated April 20, 2021*

In exercise of the powers conferred under sub-section (1) of section 22 of the National Investigation Agency Act, 2008 (Act No. 34 of 2008), the Governor with the concurrence of Hon’ble High Court of Judicature at Allahabad, is pleased to designate the 3rd Senior most Court of Additional District and Session Judge, Lucknow as Special Court having territorial jurisdiction of whole state of Uttar Pradesh for the trial of all offences as specified in the Schedule appended to the aforesaid Act, which are investigated by Anti-Terror Squad/State Police of Uttar Pradesh.

*By Order,
x x x x
(Awanish Kumar Awasthi)
Additional Chief Secretary”*

- (17) The aforesaid notification dated 20.04.2021 clearly indicates that a single Court was designated for the State largest in population which is burdened with the pendency of so many cases notified by the Central/State Government as on date.
- (18) Considering the above categorization, we depict the pendency of cases before the Court(s) concerned in the State of U.P. in the the following chart:-

Cases registered by Central Government – N.I.A. Cases			
Sl. No.	Name of Court	Number of trials pending	Number of bail applications pending
1.	H.J.S. Cadre	06	00

Cases registered by Police Station under Scheduled Offences National Investigation Act			
Sl. No.	Name of Court	Number of trials pending	Number of bail applications pending
1.	H.J.S. Cadre	500	10

Cases registered by State Government – A.T.S. Cases			
Sl. No.	Name of Court	Number of trials pending	Number of bail applications pending
1.	H.J.S. Cadre	50	02
2.	Judicial Magistrate	28	00

- (19) The position discussed above makes it evident that the Central Government and State Government both have notified the Special Courts. Besides the above, a Court of Judicial Magistrate is also stated to be functional for the purpose of trying the scheduled offences within its jurisdiction. **The position as to the notification of Special Courts may be re-considered by the State Government so as to streamline the process of justice strictly in accordance with the Act and the underlined objects therein.**

- (20) The constitution of Special Courts undoubtedly is a special measure under the Act and its objectives have to be achieved by following the mandate of law strictly both in terms of creating the adequate number of Courts as well as by imparting special training to such Judicial Officers/Presiding Officers posted in the said Courts so that the administration of justice serves the real purpose of law governing national security and sovereignty.
- (21) Apart from above, this Court would further take note of the fact that by virtue of Section 15 of the Act, the State Government is bound to appoint Public Prosecutors insofar as the trials of scheduled offences by the Special Courts are concerned. We are informed that no such mechanism is in motion by the State Government to appoint Public Prosecutors to conduct the cases before the Special Courts which deserves to be considered by the State Government at the earliest, apart from ensuring prompt investigation in accordance with law.
- (22) The irresistible conclusion leads us to direct the State/Central Government as under:-
- (i) To consider issuance of notification of more Special Courts so as to expedite the scheduled offences mentioned in the Act and conclude the proceedings promptly to serve the objectives of the Act.
- (ii) To appoint Public Prosecutors to conduct the cases before the Special Courts besides issuing directives to complete investigation promptly by following due procedure under law.
- (23) We also deem it appropriate that the Director, Judicial Training & Research Institute (JTRI) shall provide training to the Judicial Officers working in all the Special Courts to achieve the distinctive objects of the relevant Acts, in its right perspective including NIA.

C. M. Application No. 1 of 2024
(Application for condonation of delay)

- (24) Heard learned Counsel for the appellant/applicant and learned Additional Government Advocate for the State.
- (25) This appeal filed under Section 21(4) of the Act is delayed by 87 days.
- (26) Having regard to the averments made in the application seeking condonation of delay, we are satisfied that the delay in filing the criminal appeal has sufficiently been explained.
- (27) Accordingly, the delay condonation application in absence of any objection is **allowed** and delay in filing the criminal appeal is hereby **condoned**.
- (28) Office is directed to allot a regular number to this appeal.

ORDER ON APPEAL

- (29) Admit.
- (30) Learned Additional Government Advocate for the State prays for and is granted two weeks' time to file objections.
- (31) **List this appeal in the week commencing 27.05.2024.**

[Ajai Kumar Srivastava-I, J.] [Attai Rahman Masoodi, J.]

Order Date :- 13.5.2024
lakshman/cks